

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 255 Discriminatory Insurance Practices

**SPONSOR(S):** Insurance & Banking Subcommittee; Gaetz and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee		Bond	Bond
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Current insurance law prohibits certain unfair insurance trade practices, such as misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Additionally, an insurer may not deny coverage, increase any premium, or otherwise discriminate against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not tied to the unfair trade practice provisions in the insurance law and thus may lack specific enforcement authority.

This bill amends the insurance laws to specify that it is an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to discriminate against an applicant or insured because of firearm ownership. However, an insurance company may charge a supplemental premium should the value of the firearms exceed the standard policy coverage.

This bill also prohibits an insurance company from disclosing an insured's or applicant's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim. Disclosure from the company to the agent is authorized where necessary for the purpose of excess coverage.

This bill does not appear to have a fiscal impact on Florida insurers because gun ownership is not currently used in determining liability in rate-setting. In some cases, insurers may have to alter their current disclosure and notice procedures to comply with this bill, resulting in an indeterminate amount of administrative costs. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

The bill takes effect July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Firearm Ownership and Possession, Generally*

Current law at s. 790.338(7), F.S., prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.<sup>1</sup> Although unrelated parts of the bill creating subsection (7) were struck down in a legal challenge, the subsection relating to firearms still remains good law today.<sup>2</sup> A perceived issue with the current law is that it lacks specific authority to take action against any insurers which violate the proscribed behavior because the prohibition is not a part of the insurance laws. However, the law would be enforceable in a civil action by an insured or an applicant against an insurance company that violated the prohibition.

###### *Regulation of Insurance Companies by the State*

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.<sup>3</sup> Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.<sup>4</sup> Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.<sup>5</sup>

OIR encounters discriminatory practices in the following ways:<sup>6</sup>

- In proposed rate filings, in which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or possesses a firearm is not common practice within the insurance industry in Florida when determining

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<sup>1</sup> Section 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.

<sup>2</sup> *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (2012).

<sup>3</sup> Section 627.062, F.S.

<sup>4</sup> Section 626.9541, F.S.

<sup>5</sup> Section 626.9541(1)(g)(1), F.S.

<sup>6</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

liability coverage in setting rates.<sup>7</sup> Insurers generally provide property loss coverage for firearms in two ways. Firearms may be covered as a part of the standard policy or as a “rider.” A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the insured or applicant’s firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.<sup>8</sup>

### **Effect of the Bill**

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to refuse to issue, reissue, or renew a policy, to cancel or otherwise terminate a policy, or to charge a discriminatory rate based on an insured’s or applicant’s or such person’s household member’s lawful use, possession, or ownership of a firearm.

The bill does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

The bill also prohibits a personal lines property or personal lines automobile insurer from disclosing an insured’s or applicant’s or such person’s household member’s ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

The prohibition on sharing information does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts by an insurer.

**Section 2:** Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

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<sup>7</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

<sup>8</sup> According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on 01/20/2014.

This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.<sup>9</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenue.

2. Expenditures:

This bill does not appear to have any impact on local expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm. The bill does not impede an individual's ability to obtain a rider with their insurance policy for property loss coverage of their firearms.
2. Insurance Providers: This bill should have little, if any, effect on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.<sup>10</sup> Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers. Additionally, the bill does not impede an insurer's ability to offer a rider for property loss coverage of firearms.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

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<sup>9</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

<sup>10</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Current law prohibits discrimination against firearm ownership or possession in any insurance line, although that prohibition perhaps may only be enforced in a civil action filed by a person against an insurance company. The apparent intent of the bill is to make such discrimination enforceable by the Office of Insurance Regulation. If so, it is unclear why such enforceability is limited to certain personal lines policies. It is also unclear why the current, less specific prohibition at s. 790.338(7), F.S., is not being repealed as a part of this bill.

The bill uses the limiting terms "personal lines property" insurer and "personal lines automobile insurer" in describing the types of insurance products to which this newly created law applies. While the terms are apparently commonly used by persons in the insurance industry, there is no statutory definition or description of the terms "personal lines," "personal lines property insurer," or "personal lines automobile insurer." Thus, the bill is perhaps unclear in its application and thus may be subject to legal challenge.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2014, the Insurance & Banking Subcommittee met and passed HB 255 with a strike all amendment. This amendment included the same or similar provisions that were in the bill relating to rates and disclosure regarding firearms. It also clarified that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allowed disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it did not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant. This staff analysis has been updated to reflect the amendment's changes.